# CERTIFICATE

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

## No. 265

KANSAS CITY TERMINAL RAILWAY COMPANY ET AL.

*vs.*

CENTRAL UNION TRUST COMPANY OF NEW YORK ET AL.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED FEBRUARY 2, 1925

(30,846)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 31, 1925

[fol. 1] **IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT**

No. 6457

KANSAS CITY TERMINAL RAILWAY COMPANY et al., Appellants,

vs.

CENTRAL UNION TRUST COMPANY OF NEW YORK et al., Appellees

Appeal from the District Court of the United States for the Eastern District of Missouri

**Amended Certificate**—Filed April 25, 1925

STATEMENT OF FACTS

This amended certificate is presented, in lieu of the certificate heretofore filed, in order that certain additional facts (deemed by the parties and this court of use in determining the questions herein submitted) might be brought to the attention of the court.

The United States Circuit Court of Appeals for the Eighth Circuit hereby certifies that a record on an appeal now pending before it discloses the following:

The Kansas City Terminal Railway Company and others filed an intervening petition in the receivership proceedings of the Missouri, Kansas & Texas Railway Company. That intervention sought to attach the obligations of passenger terminal contracts to the property in such a way that the obligations of these contracts would be either a lien on the property prior to all mortgage obligations or would follow the property into the hands of any purchaser under foreclosure of the mortgages. It was determined by the district court and affirmed by this court (294 Fed. 32) that these terminal contracts were ordinary executory contracts entered into by the Missouri, Kansas & Texas Railway Company as aids to its operation.

Thereafter, the property in receivership was sold under foreclosure. The purchase was in pursuance of a re-organization plan. This plan involved lien holders, unsecured creditors and stockholders. In [fol. 2] so far as the plan affects lien holders it is not involved in this appeal. The points raised on this appeal relate to the fairness of the offer to these interveners which were classed as unsecured creditors. This plan was not submitted to the court but the offer to unsecured creditors, as contained therein, was submitted and approved. Their claim is that the stockholders were unduly preferred in this re-organization plan.

By the re-organization plan the new company was to have four classes of securities as follows:

Prior Lien Mortgage Bonds (authorized issue $250,000,000),

Cumulative Adjustment Mortgage Bonds (authorized issue $100,000,000) which were income bonds secured by mortgage as to principal,

Preferred Stock (authorized issue $200,000,000),

Common Stock without par value (authorized issue 2,500,000 shares).

Of the above securities, certain amounts of each were reserved for future use by the new company. Of the prior lien bonds provided for distribution in the plan, some bore interest at four per cent, some at five per cent and some at six per cent respectively.

Under the re-organization plan new securities were offered to the holders of seventeen separate issues of outstanding bonds of the Missouri, Kansas & Texas Railway Company and its various subsidiary companies secured by mortgage and of one issue of notes secured by the pledge of mortgage bonds. In some cases, but not in all, cash was offered to the holders of these secured claims in addition to new securities. In all cases the par amount of the new securities offered (taking the new non par value common stock at $100 per share) plus the cash offered, if any, equalled, and in no case did it exceed, the principal amount of the old outstanding securities in respect of which the offer was made plus the unpaid interest thereon up to January 1, 1922.

Of said eighteen outstanding issues

Five issues were offered only New Prior Lien Bonds and cash,

One issue was offered only New Prior Lien Bonds,

Five issues were offered only New Prior Lien Bonds and New Adjustment Bonds,

Three issues were offered only New Prior Lien Bonds, New Adjustment Bonds and New Preferred Stock,

One issue was offered only New Adjustment Bonds and New Preferred Stock,

[fol. 3] Three issues were offered only New Adjustment Bonds, New Preferred Stock and New Common Stock.

In all cases the New Prior Lien Bonds and the New Adjustment Bonds (whether offered to secured creditors, unsecured creditors or stockholders) were to bear interest from January 1, 1922.

In so far as the re-organization plan affected stockholders and unsecured creditors its provisions were substantially as follows:

(1) Preferred stockholders were entitled to receive $14 in Prior Lien Bonds (bearing six per cent interest), $6 in Adjustment Bonds and one share of Common Stock in the new company upon payment of $20 for each share of stock of the par value of $100 held in the old company; (2) Common stockholders were entitled to receive $17.50 in Prior Lien Mortgage Bonds (bearing six per cent interest), $7.50 in Adjustment Bonds and one share of Common Stock upon payment of $25 for each share of stock of the par value of $100 held in the old company; (3) Unsecured creditors were given the choice of two plans: (a) one-third of a share of Preferred Stock of the par value of $100 and two-thirds of a share of Common Stock without par value for each $100 of the aggregate amount of the claim, in-

cluding interest to January 1, 1922, whereas the receiver was appointed and took possession of the property on September 27, 1915, the foreclosure decree was entered on June 30, 1922, the offer to creditors was dated July 15, 1922, the foreclosure sale was had on December 13, 1922, the order confirming the sale was entered February 9, 1923, and the order approving the Master's deed conveying the property to the new company was entered on March 10, 1923; (b) $14 in Prior Lien Mortgage six per cent bonds, $6 in Adjustment Mortgage Bonds and one share of Common Stock upon payment of $18 for each $100 of said claim.

A claim made by appellants here is that certain decisions of the Supreme Court of the United States (Northern Pacific Railway Company v. Boyd, 228 U. S. 482; Louisville Trust Company v. Louisville Railway Company, 174 U. S. 674) require that an offer in a re-organization plan, in order to be a fair and binding offer upon the creditor must be one which will preserve "to the creditor, his rela-[fol. 4] tive priority over the stockholder. It is not sufficient that he should get a little more than the stockholder. His entire claim must take precedence over any part of the interest of a stockholder. It is not sufficient that he be offered securities of the same grade as the stockholder but a trifle more in amount, or that the stockholder's right to participate be conditioned upon the payment of an assessment."

## Questions Certified

It is further certified that the following questions of law arise from this record and are presented, the decision of which is indispensable to a determination of the case. To the end that this court may properly discharge its duty it desires the instruction of the Supreme Court upon them.

Question I. Is a plan of re-organization of a railway company sufficient as to unsecured creditors and binding upon them which does not give precedence to the entire claim of the creditor over any part or interest of a stockholder in the old company?

Question II. Is such a plan fair and binding upon such creditors even though they be offered securities of the same grade as the stockholders, the difference being only in the greater amount offered the creditors, provided the court shall be of the opinion that the offer tenders to such creditors all that could reasonably be expected under all of the existing circumstances?

Question III. Is such offer as to such creditors fair and binding if it consists only of the same grade of securities as offered the stockholders, the difference being that the right of the stockholders to participate is conditioned upon the payment of an assessment or the payment of a relatively greater assessment than that asked of such creditors, provided the court shall be of the opinion that the offer

tenders to such creditor all that could reasonably be expected under [fol. 5] all of the existing circumstances?

Kimbrough Stone, United States Circuit Judge; William S. Kenyon, United States Circuit Judge; C. B. Faris, United States District Judge, Being the Judges who sat in the Circuit Court of Appeals on the Hearing of the Case.

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[fol. 6] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing Amended Certificate in the case of Kansas City Terminal Railway Company, et al., Appellants, vs. Central Union Trust Company of New York, et al., Appellees, No. 6457, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-third day of April, A. D. 1925.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal of the United States Circuit Court of Appeals, Eighth Circuit.)

[Endorsed:] U. S. Circuit Court of Appeals, Eighth Circuit. No. 6457. Kansas City Terminal Railway Company et al., Appellants, vs. Central Union Trust Company of New York et al. Amended certificate of questions to the Supreme Court of the United States. Filed Apr. 23, 1925. E. E. Koch, clerk.

DENIED MAY 4 - 1925

APR 25 [illegible]
WM. R. STANS[illegible]

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, [redacted] 192[illegible]**

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**No. [redacted] 285**

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KANSAS CITY TERMINAL RAILWAY COMPANY ET AL.

*vs.*

CENTRAL UNION TRUST COMPANY OF NEW YORK, TRUSTEE, ET AL.

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## MOTION TO BRING UP ENTIRE RECORD AND CAUSE.

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